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REPORT

on the request for waiver of the immunity of Jean-Charles Marchiani
(2003/2115(IMM))

Committee on Legal Affairs and the Internal Market

Rapporteur: Klaus-Heiner Lehne

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PROCEDURAL PAGE

At the sitting of 12 May 2003 the President of Parliament announced that he had received by letter of 15 April 2003 a new request from the competent French authorities for waiver of the immunity of Jean-Charles Marchiani and that he had referred it to the Committee on Legal Affairs and the Internal Market pursuant to Rule 6(2) of the Rules of Procedure.

The committee appointed Klaus-Heiner Lehne rapporteur at its meeting of 21 May 2003.

At its meeting of 10 September 2003 and 8 July 2003 it held an exchange of views on the reasons for and against the waiver of immunity.

It considered the draft report at its meeting of 26 November 2003 and adopted the proposal for a decision unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Uma Maija Aaltonen, Paolo Bartolozzi, Michel J.M. Dary, Marie-Françoise Garaud, Malcolm Harbour, Piia-Noora Kauppi, Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Nicole Thomas-Mauro (for Brian Crowley, pursuant to Rule 153(2)), Maurizio Turco, Joachim Wuermeling, Stefano Zappalà and François Zimeray.

The report was tabled on 27 November 2003.

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Jean-Charles Marchiani (2003/2115(IMM))

The European Parliament,

- having received a request for waiver of the immunity of Jean-Charles Marchiani, forwarded by the Minister for Foreign Affairs of the French Republic on 29 April 2003 and announced in plenary sitting on 12 May 2003,
 - having regard to Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, and to Article 4(2) of the Act concerning the Election of Representatives to the European Parliament by direct universal suffrage of 20 September 1976,
 - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986¹,
 - having regard to Article 26 of the Constitution of the French Republic,
 - having regard to Rules 6 and 6a of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0423/2003),
1. Decides not to waive the immunity of Jean-Charles Marchiani;
 2. Instructs its President immediately to forward this decision and the report of its committee to Minister for Foreign Affairs of the French Republic.

¹ See Case 101/63: Wagner v Fohrmann and Krier [1964] ECR 399 and Case 149/85: Wybot v Faure [1986] ECR 2403.

EXPLANATORY STATEMENT

I. Facts

This new request by the First Examining Magistrate of the Court of First Instance (Tribunal de Grande Instance) of Paris is based on a statement made by a Swiss examining magistrate in Geneva to the French judicial authorities stating that Jean-Charles Marchiani received a sum totalling FF. 9 703 826 on one of his Swiss bank accounts between August 1991 and January 1994.

This sum allegedly corresponds to a commission paid by an engineering consultancy for securing a contract with the 'Aéroports de Paris' for a system for the transport, storage and sorting of luggage. The ensuing investigations led on 22 October 2003 to the opening of a judicial investigation by the Court of First Instance against Jean-Charles Marchiani and two other persons accused of receiving stolen goods and embezzling company assets, offences which are punishable under Article L 246-2, L 242-30 and L 242-6-3 of the French Commercial Code and Article 321, paragraph 1 ff., of the Criminal Code.

II. The request by the French authorities

- (a) At this stage in the case, Jean-Charles Marchiani should be **remanded in custody**. To this end the waiver of his parliamentary immunity must be secured. This is necessary owing to:
- the gravity of the charges against the accused;
 - the risk that he may abscond (Jean-Charles Marchiani has substantial assets abroad);
 - the risk that he may hinder the investigations (by colluding with third parties, contacting the asset managers and arranging to have himself declared insolvent).
- (b) Jean-Charles Marchiani should be placed under judicial supervision comprising the following measures:
- the freedom of movement of the accused must be limited to prevent him contacting witnesses and travelling to Switzerland where he has bank assets;
 - he must be obliged to post bail commensurate with the commission he is alleged to have received.

III. Rapporteur's assessment

This is the third request for the waiver of the parliamentary immunity of Jean-Charles Marchiani, but the charges on which it is based are different from those in the two previous procedures.

All the procedures have been initiated by Mr Philippe Courroye, First Examining Magistrate

of the Court of the First Instance of Paris (Letters of 29 June 2001¹, 26 November 2002² and 18 March 2003³).

The application for the waiver of the parliamentary immunity of Jean-Charles Marchiani of 2001 (on a different charge) was rejected by the European Parliament *inter alia* because it could not rule out that this was a case of 'fumus persecutionis'. This principle is designed to ensure that Members of the European Parliament are protected from politically motivated prosecution.

This principle crystallised as the European Parliament acquired experience in dealing with requests for the waiver of immunity its Members⁴ and is enshrined in the decision of the European Parliament on the Adoption of a Statute for Members of the European Parliament⁵. Recital 32 thereof states that:

'the immunity provided for in Article 5 protects Members from politically motivated prosecution (*fumus persecutionis*) and restrictions imposed by the executive branch. As various cases decided on by the European Parliament show, there can be no question of these aspects no longer playing a role today. ... It must be possible to suspend investigations and criminal proceedings at the insistence of the European Parliament if '*fumus persecutionis*' is involved.'

Your rapporteur takes the view that if this tried and tested principle is applied to the special circumstances of the case under review, it is impossible to rule out that these criminal proceedings which have been initiated by isolated individuals in the French judiciary may be motivated by the desire to prejudice the political activities of the Member in question.

A number of Members pointed this out during the discussion of 8 July 2003 in the Committee on Legal Affairs and the Internal Market. They noted in particular that under the French Constitution it would have been possible to conclude the investigations against the accused before requesting the waiver of parliamentary immunity. Furthermore, the magistrate in question has clearly failed to respect the principle of the confidentiality of judicial investigations, as the comprehensive leaks in the French press show.

It has also emerged that the investigating magistrate is himself the subject of an internal investigation by the judicial administration on charges of forging documents⁶.

¹ First Procedure: Notice to Members No. 1/2002, PE 312.766

² Second Procedure: Notice to Members No. 7/2003, PE 332.522

³ Third Procedure: Notice to Members No. 10/2003, PE 332.543

⁴ For recent discussions see for instance the Zimeray report A5-0123/2001 -IMM2000/2237 on the request for the waiver of the immunity of Mr Sichrovsky.

⁵ INI2003/2004; A5-0193/2003 of 4 June 2003

⁶ *Nouvel Observateur* No. 2028 of 18 September 2003, p. 49; *Le Monde* 12 September 2003, AFP report No. 121253 of 12 September 2003; *Le Monde* of 3 November 2003

IV. Conclusion

In view of the foregoing, the Committee on Legal Affairs and the Internal Market recommends the European Parliament not to waive the parliamentary immunity of Jean-Charles Marchiani.

Article 26 of the Constitution of the French Republic

Article 26 of the Constitution of the French Republic states:

No member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the exercise of his duties.

No member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorisation of the bureau of the assembly of which he is a member. Such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence.

The detention, subjection to custodial or semi-custodial measures, or prosecution of a member of Parliament shall be suspended for the duration of the session if the assembly of which he is a member so requires.

The assembly concerned shall convene as of right for additional sittings in order to permit the preceding paragraph to be applied should circumstances so require.